

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 27, 2013, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Tracy Corr, Maja V. Harris, Chris Hove, Lynn Sunderman and Ken Weber (Michael Cornelius, Jeanelle Lust and Dennis Scheer absent); Marvin Krout, Steve Henrichsen, Christy Eichorn, Paul Barnes, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Vice-Chair Chris Hove called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Hove requested a motion approving the minutes for the regular meeting held November 13, 2013. Beecham moved approval, seconded by Weber and carried 5-0: Beecham, Corr, Hove, Sunderman and Weber voting 'yes'; Harris abstained; Cornelius, Lust and Scheer absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 27, 2013

Members present: Beecham, Corr, Hove, Harris, Sunderman and Weber; Lust, Cornelius and Scheer absent.

The Consent Agenda consisted of the following item: **SPECIAL PERMIT NO. 13052.**

There were no ex parte communications disclosed.

Corr moved approval of the Consent Agenda, seconded by Weber and carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting 'yes'; Cornelius, Lust and Scheer absent.

Note: This is final action on Special Permit No. 13052, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

**STREET & ALLEY VACATION NO. 06007,
TO VACATE PINE RIDGE LANE WEST OF THE
WEST LINE OF WESTSHORE DRIVE, AT APPROXIMATELY
HIGHWAY 2 AND ASHBROOK DRIVE.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 27, 2013

Members present: Beecham, Corr, Harris, Hove, Sunderman and Weber; Lust, Cornelius and Scheer absent.

The Clerk announced that the applicant has requested an additional eight-week deferral.

Sunderman moved to defer, with continued public hearing and action scheduled for Wednesday, January 22, 2014, seconded by Beecham and carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting yes; Lust, Cornelius and Weber absent.

There was no public testimony.

**COUNTY TEXT AMENDMENT NO. 13013,
TO AMEND THE LANCASTER COUNTY ZONING RESOLUTION
and
COUNTY SPECIAL PERMIT NO. 13051,
TO ALLOW A SOLID WASTE PROCESSING FACILITY
ON PROPERTY GENERALLY LOCATED AT
13000 PELLA ROAD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION: November 27, 2013

Members present: Beecham, Corr, Harris, Hove, Sunderman and Weber; Lust, Cornelius and Scheer absent.

The Clerk announced that the applicant and the Health Department have requested a two-week deferral.

Sunderman moved to defer, with continued public hearing and action scheduled for Wednesday, December 11, 2013, seconded by Corr and carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting yes; Lust, Cornelius and Weber absent.

Opposition:

1. **Brian Warrington**, 14200 Pella Road, testified with concerns about the amount of traffic which will be generated from this facility. The application is for a facility with 100,000 cubic yards, yet the application indicates that there would be approximately 5 trucks per day at capacity. That would involve trucks with a capacity of about 80 cubic yards per truck, and typically a good sized dump truck is 10 cubic yards. So Warrington believes the traffic indicated in the application is underestimated by at least a factor of eight. He

calculated 40 trucks per day for the 100,000 cubic yards. That type of volume would require a serious evaluation of the County roads. The application shows the traffic coming predominantly up Pella Road from Hwy 43, and Warrington suggested that that road is really not capable of handling that type of traffic. His main objections are the traffic pattern and the amount of traffic that is involved.

There was no other public testimony.

ADMINISTRATIVE AMENDMENT NO. 13075
TO SPECIAL PERMIT NO. 07041,
FOX TRAIL ESTATES COMMUNITY UNIT PLAN,
TO REDUCE THE SIDE YARD SETBACK ON THE
NORTH SIDE OF OUTLOT D, ON PROPERTY GENERALLY
LOCATED AT S.W. 56TH STREET AND WEST OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 27, 2013

Members present: Beecham, Corr, Harris, Hove, Sunderman and Weber; Lust, Cornelius and Scheer absent.

The Clerk announced that the applicant has requested a six-week deferral.

Sunderman moved to defer, with continued public hearing and action scheduled for Wednesday, January 8, 2014, seconded by Corr and carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting yes; Lust, Cornelius and Weber absent.

There was no public testimony.

CHANGE OF ZONE NO. 13025
FROM R-2 RESIDENTIAL DISTRICT TO
R-T RESIDENTIAL TRANSITION DISTRICT,
and
USE PERMIT NO. 13010,
TO ALLOW A MEDICAL OFFICE BUILDING,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 11TH STREET AND HIGH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 27, 2013

Members present: Beecham, Corr, Harris, Hove, Sunderman and Weber; Lust, Cornelius and Scheer absent.

Staff recommendation: Approval of the change of zone and conditional approval of the use permit.

There were no ex parte communications disclosed.

Staff presentation: **Christy Eichorn of Planning staff** explained that the change of zone is from R-2 to R-T, which is a transitional zoning district between commercial and residential properties. The subject property is located on High Street and South 10th Street where Hwy 2 turns into S. 10th Street. It is across the street from a gas station with residential to the east, Van Dorn Park to the west and more commercial southeast of the gas station.

Today, the property currently consists of one single-family residence as well as an apartment complex. It is a one-story 6-plex located in R-2 zoning which makes it a nonconforming use. Today, the applicant is requesting a use permit that would allow an office or medical office on this site. The applicant has submitted a site plan showing both parking and landscaping, as well as the building they are requesting.

The application also includes a request to reduce setbacks, including a small reduction along South 10th Street to facilitate parking; to reduce the setback to zero along High Street to facilitate necessary parking; and a small reduction on South 11th Street. The residential houses just north have setbacks that are less than 25 feet. The house to the north has a 15' front yard setback, so this applicant is proposing to have that same setback. It will be landscaped in accordance with the parking lot design standards plus additional landscaping in order to help mitigate the reduced setback on both High Street and South 11th Street. The landscaping on High Street would be placed in the right-of-way. There is a large amount of right-of-way located on South 10th Street at this location. South 10th Street is not an arterial street, yet there is still 100' of right-of-way to facilitate the additional landscaping.

Eichorn also explained that the R-T zoning district can allow some small retail. In this case, it is allowing a certain amount of square footage for office/medical office. In the future, if the owner sells the building, the use permit does stay with the property and it would need to remain an office or medical office.

Beecham inquired whether medical office is normally allowed in R-2. Eichorn stated that it is not. The applicant was specifically asking for office or medical office and it just made sense for a use permit at this time. Beecham wondered why there were concerns about office uses when the R-2 district regulations were crafted. Eichorn responded that this is a change to R-T, which does allow a small amount of other uses besides office and medical uses. It depends on the user. That is why R-T is a use permit district with limited uses and design standards, which none of the other zoning districts have, to help the transition from commercial to residential, including pitched roof, nothing on the rooftops, etc. The requirement is a 5,000 sq. ft. or less building footprint.

Beecham inquired about the buffer between the complex and the residence to the north. Eichorn stated that the office building actually backs itself to the residential, which was by

design so that the parking and traffic coming into the office would come off High Street and close to the intersection of 11th & High. A fence is required.

Beecham inquired whether the applicant or staff has heard anything from the neighbors. Eichorn has not heard anything specific from the neighbors, but a representative of the Indian Village neighborhood did indicate there was no objection from their board. There has been nothing received in writing and no phone calls.

Proponents

1. **Lyle Loth** appeared on behalf of **Advanced Chiropractic Solutions**, the applicant. Loth had no additional information to share. He did point out that he had also sent a letter to the neighbors and received no comments whatsoever. In regard to the landscaping and buffering, there is significant landscaping along the north property line – there is double landscaping along both High Street and 11th Street.

Corr expressed appreciation to the applicant for reaching out to the neighbors.

There was no testimony in opposition.

CHANGE OF ZONE NO. 13025

ACTION BY PLANNING COMMISSION:

November 27, 2013

Corr moved approval, seconded by Sunderman.

Corr commented that this is a good change in the zoning. We already have a nonconforming use and it will help put it back into conforming. R-T is pretty new to us, but it puts a nice buffer between residential and commercial.

Hove believes this is a better use for the property with the traffic on Hwy 2.

Motion for approval carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting yes; Lust, Cornelius and Weber absent. This is a recommendation to the City Council.

USE PERMIT NO. 13010

ACTION BY PLANNING COMMISSION:

November 27, 2013

Weber moved to approve the staff recommendation of conditional approval, seconded by Beecham and carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting yes; Lust, Cornelius and Weber absent. This is a recommendation to the City Council.

COUNTY SPECIAL PERMIT NO. 13050,
VANDERVIEW RIDGE COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 120TH STREET AND PANAMA ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 27, 2013

Members present: Beecham, Corr, Harris, Hove, Sunderman and Weber; Lust, Cornelius and Scheer absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Staff presentation: **Steve Henrichsen of Planning staff** made the staff presentation in the absence of the staff planner on this application, Sara Hartzell. This application is generally located at 120th and Panama Road. The Hedgefield Lake area is to the north; all surrounding property is zoned AG. This application is for a community unit plan. The 132 acres would remain zoned AG, and the applicant is requesting a 25% bonus for the preservation of farmland. Thus, the applicant will be required to preserve at least 92 acres of farmland; the bonus allows them to go from 6 to 8 dwelling units. Panama Road on the north is a paved road but 120th on the east is a gravel road. On the eastern portion of the site there is a large area of floodplain adjacent to 120th Street. The site plan proposes main access off the north from Panama Road. There is farmland preserved on the northern end, then four dwelling units, and then another four dwelling units on the center portion.

The main features noted on the site plan are three varied pipelines that traverse the site, i.e. natural gas, mixed fluids and anhydrous ammonia. Those three pipelines sit in the middle in a 60' easement, but after discussion with Health and Planning staff, the applicant has agreed to provide a 500' buffer from the three pipelines. The recommendation that we try to provide as much space between pipelines and residential uses as possible is found in the Comprehensive Plan and is based on a recommendation of a joint committee of the Board of Health and Planning Commission held several years ago. Those recommendations were included in the Comprehensive Plan. In general, depending on the size of the pipeline and whatever material is in the pipeline, the size and the buffer may differ. This is one of the largest buffers we have had in terms of an application.

Henrichsen believes that the applicant will address some of the questions raised in letters of opposition. There was a well report submitted. The dwelling units will all be on individual wells. The well report was reviewed by the Health Department, determining that there is adequate water quality and quantity. All sites will be served by individual wastewater systems – septic or lagoon. There is a waiver request to reduce the setback on a few of the lots on the western side. The lots are quite large -- over 3 acres -- but the applicant will not be allowed to have any habitable buildings in the area within that 500'

buffer, so the reduced front yard from 50 feet to 20 feet provides a little more space. The front yard setback would be to the internal roadway and no external properties. Within the area of the private lots within that buffer they could have an access garage but it would not be allowed to be habitable with heating and bathrooms, etc.

Henrichsen then noted the letter in opposition from the property owner to the north, who is questioning and has concerns about the wells and the location of the future roadway where there is a farm access drive today. The concern is that traffic lights would shine onto their house located to the north. They are approximately 830 feet north of the roadway. The first house would be another 730 feet to the south of the roadway, so there would be 1600' between their house and any other houses. They had requested that a tree line be planted along the north part of the applicant's property but staff does not believe that is necessary with the 1600' between the houses.

Corr noted that the County Engineer recommends that the road be moved slightly one way or the other because of the hilliness of Panama Road. How much will that affect the house to the north? Henrichsen does not believe it will be substantial. He is also not sure car headlights would have much of an impact at 800 feet away.

Beecham noted the wildlife management area east of the private property. Henrichsen pointed out that the wildlife management area is across the street. Most of the property where they are proposing development is farmland today. The areas more typical of habitat would be along the drainageway. The property on the eastern side will be left undeveloped.

Proponents

1. Mike Eckert of Civil Design Group, appeared on behalf of **Vanderview Estates, LLC**, and **Doug Wieskamp**. This land has been in the Wieskamp family for some time. Doug Wieskamp actually lives on the other side of 120th Street to the east. Eckert agreed with the staff presentation. When they submitted this application, the applicant had proposed a 150' buffer from the underground pipelines, and in working with the Health Department, the applicant has agreed to the 500' buffer. This meant extending the roadway quite a bit to the east, but they were able to still get eight lots with a pretty productive area, restricting the residences to be outside of that distance.

Eckert acknowledged that the County wants them to move the road 25' to the west. It may line up more with the house to the north but it is 844' from the road. But more importantly, from the road to their house, the elevation drops 24' so he does not believe any headlights would hit their house. There is another 700' on the applicant's property.

With regard to Vanderview Road as it goes towards 115th Street, Corr inquired whether it meets up with 115th Street. Eckert responded that there is another 1/4 mile of property. Corr noted that the staff wants the applicant to extend Vanderview Road to the other side

because if there was a leak on one of those pipelines, those residents of those four houses would have to cross that 500' buffer and could potentially not get out. The same concern exists on the other side by 115th Street -- they will still have to come into the buffer zone to get out of there. Do we need access to 115th Street as well? Eckert personally does not believe it is a concern. The buffer is there in the event something happens to the pipeline. The typical procedure is that they ask people to seal up their house and there may be some evacuation period. If the break was right there on the road, some would have to find another way, perhaps following the tree line and drainageway. The drainageway drains three square miles. To build a road to cross that drainageway to make a connection to 115th Street would be extremely expensive, i.e. \$150,000 to \$200,000. There are almost two miles to the southwest and 1 ½ miles to the southeast draining to that point, so to build that road would be very costly, thus staff has agreed that the cost/benefit for what is the percentage of chance that there would be a break in that line in a location that they could not cross does not justify the extension. This applicant does not own the land to extend in the other direction. Staff agrees that we do not need to cross the floodplain.

Maja inquired about the developer's plan to educate future homeowners about the pipelines and how to proceed if there is a problem. Eckert suggested that the best way is to have that as part of the covenants filed with the Register of Deeds. The property owners will receive the covenants during the closing process and it will have notes about where the pipelines are located and how to proceed. It is also public record for any future buyers.

Corr referred to the house that is not included in this plan. Is that house in the 500' buffer now? Eckert acknowledged that it is. In fact, there are several houses much closer than the 500' both north and south. There is a 60' easement there today. Be it good or bad, as you go diagonally each direction, there are a lot of houses that are pretty close.

There was no testimony in opposition.

Staff questions

Beecham wondered whether there was any discussion about how many homes this area could sustain overall, or did the discussion just take these particular homes on the site plan into account. Henrichsen stated that various people at the Health Department reviewed the water report but the author was not present. However, Henrichsen believes that the discussion most likely looked at this application in particular.

Corr inquired as to the procedures if one of those three pipelines would break. What is the risk? **Chris Schroeder** of the **Health Department** advised that there are three lines. The anhydrous ammonia is toxic. There is also a propane pipeline. The procedure is a "house in place" scenario. If there is a rupture, people can close doors and windows and shut down heating and air conditioning system. If the line cannot be shut down remotely, then they would need to evacuate.

Beecham wondered about the dirt road along the drainageway as a back road out. Schroeder was not familiar with that situation.

Corr inquired how much time the owners would have to close their homes. Schroeder stated that it depends on the event. It could be minutes, half an hour, an hour, etc.

Response by the Applicant

With regard to the water issue, Eckert advised that the applicant submitted all of the required well information. There is a center pivot in the next section to the south. Lancaster County Rural Water is available in areas around here but not into this particular area. Generally, people need wells to get adequate water. Health was not concerned about the quantity.

ACTION BY PLANNING COMMISSION:

November 27, 2013

Beecham moved to approve the staff recommendation of conditional approval, seconded by Weber.

Beecham suggested that it is important to have information available so that once the houses are built the owners/residents are really clear about what is there.

Hove believes this is a good project and he will support it.

Motion for conditional approval carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting yes; Lust, Cornelius and Weber absent. This is final action, unless appealed to the Lancaster County Board of Commissioners with 14 days.

SPECIAL PERMIT NO. 13053

FOR THE EXPANSION OF A NONCONFORMING USE

ON PROPERTY LOCATED AT 1823 O STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 27, 2013

Members present: Beecham, Corr, Harris, Hove, Sunderman and Weber; Lust, Cornelius and Scheer absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Staff presentation: **Paul Barnes of Planning staff** explained that this is a request for a special permit to expand a nonconforming use. That nonconforming use is a sexually oriented live entertainment establishment (SOLEE) located at 1823 O Street, also known as The Foxy.

The use in this specific location became nonconforming in 2008 when there was an ordinance passed by the City Council prohibiting SOLEE's in this portion of the B-4 Downtown zoning district. There was another ordinance passed in 2011 where the entire B-4 district throughout the Downtown prohibited this use.

Barnes advised that specific to this location, The Foxy became nonconforming in 2008. Being that it was a legal nonconforming use, the operation could continue as a SOLEE, but if there were ever any significant changes, expansions, alterations or modifications, then in order to have that approved, there would need to be a special permit approved authorizing that work.

The current owner purchased the property earlier this year, and at that time the business did occupy a 24 x 92 square foot area on the east side of this building. The entire building does contain two tenant spaces, roughly 24 x 92 square feet in area.

The business has somewhat of a history with some permits, both building and liquor licenses. Notably, a building permit was issued for this site in June of this year which had erroneously allowed the expansion without a special permit. This site is also subject to the Downtown Design Standards which do impact the building facades. There were various liquor licenses issued to expand the licensed premises and to modify the licensed premises, but as of today there is a liquor license that is active for the east/original side of this building where the business exists today.

Barnes further explained that this request is to double the establishment in size and to occupy the entire building, both tenant spaces, for a total of 4,400 sq. ft. Typically, when we receive a request for special permit to expand a nonconforming use, we look at criteria of the Lincoln Municipal Code including how this expansion would impact adjacent properties; how would it impact the density and land use; and if not approved, what the hardship would be to the applicant. The staff report includes conditions of approval that are very specific to this request that would make the business and site more conforming and meet more of today's current standards.

Specific to this request, Barnes explained that staff is looking at the Downtown Design Standards and how some of these standards can bring the site up to current regulations and what can be done with this expansion, if approved, to accomplish that. Staff had previous discussions with the applicant and did talk about how certain things can be done to the facade to meet the Downtown Design Standards and also be sensitive to providing screening to the public. This criteria has been included in the conditions of approval with the view from the public being a traditional business facade and painting the windows from the inside would provide that screening. The windows that were to be put in place and painted could actually serve a different use in the future, if necessary.

Barnes also advised that another criteria proposed was with regard to the signage allowed. There was a sign permit issued in October of this year for the signage on this building

totaling 46 sq. ft. The amount is based on the sign code which would allow up to 30% of the architectural facade to be occupied by signage. In this case, that would be over 100 sq. ft. of signage. The staff recommendation is to limit that signage to be more amenable to the neighbors and the adjacent properties.

Barnes advised that staff did just have a discussion with the applicant on the signage and we may want to modify the recommendation in the staff report to allow a little more flexibility in the even that there is some kind of kitchen established in this building. The note would still require the Planning Director to approve modifications to the signage or the building design itself, but would allow up to 25 additional square feet of wall signage and would allow temporary wall signs per the regulations, both approved by the Planning Director.

Harris inquired about the scope of the Planning Director's discretion when it comes to permitting modifications. Barnes explained that the intent is to be sure that any changes or modifications to the facade would not negatively impact adjacent properties or the surrounding area. There would be discretion for the Planning Director to do so. Harris further inquired whether the modifications would relate to signage size and content. **Marvin Krout, Director of Planning**, approached stating that normally, the rule is that signs can deal with area, height, spacing, etc., but not with content. However, because the applicant is asking for a special permit in this case, we do have more flexibility. We all understand that this is a sensitive issue and it is preferable not to have to bring content specific sign issues in front of the Planning Commission and City Council every time he has a specific idea.

Beecham inquired about the adjacent property. Barnes stated that there is a liquor store to the west; office type space to the east; and an office building across the street.

Proponents

1. Donald Arena, 1930 Surfside Drive, the applicant, stated that he comes before the Planning Commission with a heavy heart. He has owned several businesses in Lincoln for 28-30 years. This is the first time he has been before the Planning Commission. Unfortunately, most of the project is complete and he was shocked to get the stop work order. The front of the facade is done. The building was in very ill-repair when he purchased it. He has put extensive work into the roof and the front of the building. It is his intent to work as much as possible with Planning, but he would like some latitude because of what has happened here and he has spent lots of money to fix the front of the building, which does not meet some of the aesthetic code. The front has been stuccoed and it is very clean. The signage is up. He desires to have the latitude to add food to this business and when he does so, he may want to put up a pizza sign or something describing what else is going on in this environment.

Arena pointed out that none of the windows shown on the site plan exist today. He would like to be able to put in the windows for the “look” that the Downtown design standards wants, but blacking them out. Arena also believes it almost makes zero sense to put the windows in, but he was hoping to come to some kind of agreement to make the appearance of windows and then if he ever sold the business, he would put the appropriate windows in at that time since he has already spent so much on the building. He knows it is a sensitive issue.

Had Arena known he would be in this situation today, he would not have purchased the business. He followed everything he was supposed to do – applied for the license; applied for the expansion; went to Building & Safety; and has been doing the construction for three months with inspectors in and out of the space; he has had Planning people drive by; and it was not brought to his attention until now. He definitely wants to try to work with the design standards, but he also wants to have some consideration as far as how to come to agreement on putting in the windows – could it look like windows or must it be real windows? Evidently the stucco does not meet standards so now he is being required to put tile on it. It is a very frustrating situation. This is a mistake that happened and he is not sure how he feels about what direction he need to drive this thing. His other two business are a restaurant and sports bar and more food oriented. He wants to include food at this location. The expansion itself puts in ADA bathrooms and that takes up a lot of space. He felt that he was making a great improvement to this building and now he is here with this situation.

Neutral

1. **Bill Meyer**, who runs a business at 1822 N Street, stated that he is not here in opposition. This gentleman has does an excellent job. Meyer has 46 parking spaces in his parking lot and his back door runs up right against Arena’s back door. This has been a blight for three years. The applicant has cleaned it up and has done a great job. However, in the future, Meyer would like the Planning Commission to consider what has happened to this area in the last year. There is no place in Lincoln that has turned itself around more. He spent \$300,000 on his building; N Street liquor is a nice place; then there is the LeBaron Duncan Art Gallery which invested \$200,000 landscaping all of the land.

The problem is that The Foxy has no parking. The gallery took up spaces and there is metered parking on 18th Street, but that is all. Zero parking. It’s a catch 22. By expanding, you will get more people and there is no place to park. Meyer has had no problems with this owner. He reiterated that he is not for nor against this application.

Staff questions

Weber sought clarification that the staff is asking the applicant to remove the stucco and redo it to meet the design standards. Barnes showed a photograph of what exists today. The applicant has installed grey stucco on the facade. He does not believe there are any

windows behind the stucco. Because it is in the B-4 district, it needs to comply with the Downtown Design Standards, and the stucco does not. He would be required to put in the elements that would make the facade comply.

Weber inquired whether the site was inspected throughout the construction process. Barnes advised that the building permit was issued in June and the stop work order was issued in October.

Beecham wondered whether anyone mentioned the design standards at the time the building permit was issued. In other words, is it the staff's responsibility to let the applicant know about the design standards? Barnes stated that it is part of the review process that comes with the building permit.

Marvin Krout stated that it is the job of Building & Safety to enforce the zoning ordinance, including the design standards. This situation is odd because it did not say what kind of use it was and it was something that might have been caught. The staff is now discussing how to avoid errors like this in the future. It is also the owner and the architect's obligation to know and understand the standards. The City makes errors from time to time and this is unfortunate.

Krout also clarified that the Planning Commission does not have the authority to waive the Downtown Design Standards. He did think the staff had an agreement with the applicant about both signage and the windows and the materials to support this special permit, and in the future this building may be reused for some other kind of use and we want the right kinds of characteristics along the street in place. For example, N Street wanted to cover up the windows, but now they have window display areas along that frontage making it a more active streetscape in character with the Downtown. We do not want to set a precedent approving waivers. If staff had waived this one, then it would be hard to say no to N Street Liquor. In the end, the Planning Commission cannot waive these standards. The process for requesting a waiver of the Downtown Design Standards is to go to Urban Design Committee or the City Council.

Sunderman confirmed that the Planning Commission really has no authority or discretion on the signage and windows. Krout stated that he and the applicant have agreed to some discretion on the signage. Currently, the applicant has 46 sq. ft. of signage. Sunderman then confirmed that the applicant is required to put the windows in, paint them and put tile across the bottom.

Weber wondered about some option that does not require cutting holes for the windows. Krout reiterated that the staff does not have the ability to waive the design standards. The applicant's option is to go to Urban Design Committee or the City Council for that waiver. The Planning Commission has some discretion. There is a very nice store front window on the expansion area and we hate to see it go. So staff is recommending that it should stay.

Weber confirmed that it is to be the Planning Commission's understanding that the applicant will put the windows in. Krout stated that to be staff's understanding as well. Weber inquired whether a false window would meet the standards. Krout stated that the false windows would not meet the spirit and intent of the ordinance to create a more active looking frontage. There is some flexibility in how you treat that window area with limited amount of advertising. Staff is not requiring the window box (like N Street Liquor). This applicant is free to do a window box, but it is not being required.

Beecham clarified that the Planning Commission is voting to approve what is in this agreement, and if the applicant wants the waiver, he has another avenue. Krout responded stating that there is the requirement to meet the Downtown Design Standards but that still gives the applicant the right to appeal it and have another body decide on the waiver of the standards.

Hove clarified that the standards relate to the windows and the tile. Krout stated that the design standards involve the permanent materials that add to the stability and appearance of Downtown.

Sunderman inquired about the parking issue. The parking is all on the street. That would be the same concern for any business expanding down there. Krout explained that the B-4 zoning district has zero parking requirement in this area and has had for many years. Sunderman assumed that a parking requirement could be a negative impact. Krout further stated that every owner has the opportunity to provide their own private parking but it is not a city requirement in the B-4 district.

Harris inquired about the possibility of expanded signage for food. Would that be part of the note that the Planning Director will have the authority to approve? And is that not part of the condition of the signage size? Barnes advised that the condition would say that the Planning Director may approve up to an additional 25 sq. ft. of temporary wall signage and that would be a condition that goes into the resolution. Then if there were a request to increase above 46 sq. ft., that would come to the Planning Director for review and approval.

Response by the Applicant

Arena pointed out that he did have a sit-down meeting with the head of Building and Safety and the Fire Inspectors when he applied for the building permit. They did talk about exactly what he was going to do so, so he contends that they were very aware of what was going on.

Hove asked Arena if he is willing to do the windows and the tile. Arena's response was that he has a major investment already. He estimated that it would cost \$12,000 to do the windows and tile; however, in the scope of things, he won't let that disrupt what he is going to do. He would like staff to at least think about some appearance of windows to keep the

costs down, and then make an agreement that if he ever sells the business or changes the use, he would install the real windows. He never wanted to be in this situation. There were mistakes made and that's why we're here today. He was hopeful to come to some kind of agreement to allow some fake-looking windows and then install the windows if he changes the use or sells the business. Hove pointed out that the Planning Commission does not have authority to allow that. Arena understood.

ACTION BY PLANNING COMMISSION:

November 27, 2013

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Beecham.

Sunderman clarified that the approval is for the expansion of a SOLEE, and with that expansion the applicant has vastly improved the property; his neighbor to the south is appreciative of the work he has done; and ultimately, the look and feel of it now is much better than it was. As to the Downtown Design Standards issue, Sunderman does not know what to say. It is a horrible situation to be in with the applicant needing to spend more money.

Weber agreed with Sunderman.

Corr agreed that this is an unfortunate situation, but we have to deal with it the best we can.

Hove agreed. We have to make the best of the situation and move on.

Motion for conditional approval carried 6-0: Beecham, Corr, Harris, Hove, Sunderman and Weber voting yes; Lust, Cornelius and Weber absent. This is final action, unless appealed to the City Council within 14 days.

ITEMS NOT APPEARING ON THE AGENDA:

November 27, 2013

Steve Henrichsen of **Planning staff** acknowledged and expressed appreciation to **Dennis Bartels**, who is retiring from the **Public Works & Utilities Department**. This is his last day with the City. Dennis has reviewed development applications in association with the Planning Department and has staffed the Planning Commission meetings for 30 plus years.

There being no further business, the meeting was adjourned at 2:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on December 11, 2013.